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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13

14 IN RE CORNERSTONE PROPANE
PARTNERS, L.P. SECURITIES
15 LITIGATION
16

Case No. C 03-2522 MHP

~~PROPOSED~~ CONFIDENTIALITY
AGREEMENT AND PROTECTIVE ORDER

17 This Document Relates To:
All Actions
18

19 IT IS HEREBY ORDERED, upon a showing that good cause exists for entry of a order
20 limiting the dissemination of Confidential information (as defined herein), with consent of all
21 parties, that each of the parties, and any non-party, that, by itself or through its counsel, agrees to
22 the terms of this Confidentiality Agreement as provided herein, shall be governed by the
23 following terms and conditions in connection with the production of Confidential Information in
24 the above-captioned action:

25 1. Definitions.

26 (a) The term "Confidential Information" means any information, whether oral
27 or in documentary or other tangible form, so designated by any producing person (as
28

1 defined herein) that it reasonably and in good faith believes is confidential and/or
2 competitively sensitive information - or, in the case of an individual producing person,
3 that contains sensitive personal information - whose disclosure could impair the interests
4 of the producing person. Specifically, to designate Confidential Information
5 "Confidential," the producing party must reasonably and in good faith believe that the
6 Confidential Information reflects: (i) confidential design, manufacturing, or marketing
7 plans, strategies, methods of information; (ii) other sensitive non-public information that,
8 if improperly disclosed, is likely to cause the producing party commercial harm; or (iii) in
9 the case of an individual producing person, sensitive personal information pertaining to
10 either the producing person or another individual person, or other sensitive non-public
11 information that, if improperly disclosed, is likely to cause commercial harm to the person
12 from whom the producing party received the information.

13 (b) The term "disclose" means to show, give, make available or communicate,
14 in any fashion, to any person, any information, document, information concerning the
15 content of any document, or any portion of the information contained in any document,
16 furnished by any party or non-party in this action.

17 (c) The term "document" has the widest meaning accorded to it under the
18 Federal Rules of Civil Procedure, and includes, but is not limited to, all written, printed,
19 typed, recorded (including but not limited to audio, video, and digital recordings),
20 pictorial, or graphic materials. The term "document" includes all data that is electronically
21 stored or maintained that is accessible through computers or other information retrieval
22 systems or devices. The term "document" includes the original version (or a copy of the
23 original version if the original is unavailable); all copies, drafts, or versions that differ
24 from the original (including but not limited to any notation, underlining, marking, or
25 information not attached to the original); all drafts, whether or not they resulted in a final
26 or distributed version; all revisions of drafts; and any preliminary or preparatory material,
27 from whatever source, underlying, supporting, considered, or used in the preparation of
28 any document. "Document" also includes any removable note or other attachment or

1 exhibit affixed to any of the foregoing. A draft or non-identical copy is a separate
2 document within the meaning of the term.

3 (d) The term "person" means any natural person, corporation, partnership, sole
4 proprietorship, group, association, organization, business entity, governmental body, or
5 agency.

6 (e) The term "producing person" means any person, whether a party or non-
7 party, who produces any information, whether oral or in documentary or other tangible
8 form, in response to any discovery method permitted by the Federal Rules of Civil
9 Procedure.

10 (f) The term "qualified person" means (i) outside counsel engaged to represent
11 one of the parties to this action, including necessary legal assistants and stenographic and
12 clerical employees actually assisting such counsel and outside vendors engaged by such
13 counsel to scan and/or code documents; (ii) in-house lawyers of a party who are engaged
14 in work related to this action, including necessary legal assistants and stenographic and
15 clerical employees actually assisting these persons; (iii) outside independent experts and
16 consultants who are assisting counsel identified in (i) and (ii) in this action and any
17 necessary assistants and stenographic and clerical employees under their direct
18 supervision and employed by them or their employer or organization; (iv) the Court and
19 the Court's personnel, including stenographic reporters; (v) the named plaintiff and
20 defendants in this action; and (vi) mediators engaged with the permission of all parties or
21 by order of this Court in connection with this lawsuit. Before disclosure to any person
22 described in (iii) and (vi) of any information designated as "Confidential," the person shall
23 execute and deliver to the attorney of record wishing to disclose the information to such
24 individual a written agreement not to use or to disclose to anyone any of the contents of
25 the Confidential Information and to be bound by the terms of this Order. Such agreement
26 shall be executed in the form of Attachment A to this Order.

27 (g) The term "receiving person" means any person to whom information is
28 disclosed in this action in response to any discovery method.

1 2. This Agreement applies to all documents and information produced in this action
2 by a producing person, regardless of whether such documents or information was produced prior
3 to or after the entry of this Agreement.

4 3. Confidential Information may be designated by any producing person as
5 "Confidential". Moreover, parties may designate documents that are produced by non-parties and
6 that contain Confidential Information as "Confidential". Any information supplied in
7 documentary or other tangible form may be designated by the producing person or producing
8 party as Confidential Information by placing or affixing on each page of such document, or on the
9 face of such thing, the legend "CONFIDENTIAL". Any information designated as Confidential
10 Information shall be maintained in confidence by any receiving person and shall be stored under
11 the direct control of counsel of record who shall be responsible for preventing any disclosure not
12 in accordance with this Agreement. Confidential Information may be disclosed only to qualified
13 persons, except for non-qualified persons permitted access to Confidential Information under
14 Paragraph 6 of this Order.

15 4. All information or documents disclosed in this action, whether or not containing
16 Confidential Information, shall be used solely for purposes of litigating this action and not in
17 connection with any other judicial or regulatory proceeding or for any business, commercial,
18 competitive, personal or other purpose. Any summary, compilation, note, or copy containing
19 Confidential Information, and any electronic image or database containing Confidential
20 Information shall be subject to the terms of the Agreement to the same extent as the material or
21 information from which such summary, compilation, note, copy, electronic image or database is
22 derived.

23 5. In the event that any question is asked at a deposition or an evidentiary hearing
24 that involves or calls for the disclosure of Confidential Information, the witness shall nevertheless
25 answer such question unless he or she has an independent basis for not responding, provided that
26 the only persons in attendance at the deposition or, if so ordered by the Court at an evidentiary
27 hearing, are persons who are qualified to receive the Confidential Information. Counsel for the
28 person claiming confidentiality may designate portions of the deposition or hearing transcript as

1 "Confidential" either at the deposition or, if so ordered by the Court at an evidentiary hearing, by
 2 making a statement for inclusion in the transcript, or within thirty (30) business days after receipt
 3 of the transcript by notifying opposing counsel in writing. All such transcripts shall be treated as
 4 "Confidential" until thirty (30) business days after receipt thereof by counsel for the parties and
 5 counsel for the witness. The reporter for any deposition or evidentiary hearing shall mark pages
 6 that contain testimony designated as Confidential information, and such confidential portions of
 7 depositions or hearing transcripts shall be bound separately from non-confidential pages of
 8 depositions or hearing transcripts.

9 6. A non-qualified person not otherwise permitted under this Agreement to have
 10 access to Confidential Information may be interviewed, may be examined as a witness at a
 11 deposition or an evidentiary hearing, may be shown, and may testify concerning, any Confidential
 12 Information, only if counsel for the interviewing or examining party believes in good faith that
 13 such person has a need to review such material and that such person is either:

- 14 (a) identified on the face of the document as an author, addressee or person
 15 who has previously seen such Confidential Information;
- 16 (b) a current employee of the designating party;
- 17 (c) a deponent or witness to which the designating party has expressly agreed
 18 to disclosure; or
- 19 (d) a deponent or witness to whom disclosure is ordered by the Court.

20 7. Inadvertent production of documents subject to the attorney-client privilege, work
 21 product immunity, or any applicable privilege or immunity shall not constitute a waiver of such
 22 privilege(s). If the production party determines that a document subject to one of the privileges or
 23 immunities in this paragraph has been inadvertently produced, the party shall notify the receiving
 24 party of that fact and provide the information required in a privilege log. Inadvertent production
 25 of Confidential Information without being marked as confidential shall not be deemed a waiver of
 26 its confidentiality. Upon notification by the production party that Confidential Information has
 27 been inadvertently produced without being marked as confidential, the receiving party shall take
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1 prompt steps to assure that the material is marked as confidential or returned to the producing
2 party for confidential designation.

3 8. This Agreement is executed solely for the purpose of facilitating the exchange of
4 information between the parties to this action without involving the Court unnecessarily in this
5 process. Nothing in this Agreement, nor the production of any documents or disclosure of any
6 information pursuant to this Agreement, shall be deemed to have the effect of (i) an admission or
7 waiver, including waiver under the rules of evidence, by any party or other subscriber to this
8 Agreement; (ii) altering the confidentiality or nonconfidentiality of any such information; or (iii)
9 altering any existing obligation of any party or other subscriber, or the absence of such obligation.

10 9. If the receiving person disagrees with the confidential designation by the
11 producing person, then the receiving person shall so notify counsel for the producing person in
12 writing. Counsel for the producing person and the receiving person shall first try to resolve such
13 dispute within five (5) business days after receipt of the receiving person's notice. If the dispute
14 cannot be resolved, the producing party shall file a motion within fifteen (15) business days
15 seeking a protective order that the contested Confidential designation is proper and that such
16 disclosure may not take place because the need for such disclosure is not outweighed by the
17 producing party's interest in limiting its dissemination. Pending a determination by the Court,
18 such information shall be treated under this Agreement as Confidential Information as designated
19 by the producing person.

20 10. No party shall be obligated to challenge the propriety of a confidentiality
21 designation, and a failure to do so shall not preclude a subsequent attack on the propriety of such
22 designation. This Agreement shall not be deemed to prejudice any party in any way in any future
23 application for a protective order.

24 11. Before filing any document under seal, a party must first, upon motion, obtain the
25 Court's consent to file such document under seal pursuant to Northern District of California Civil
26 L.R. 79-5. All documents containing Confidential Information that are filed with the Court shall
27 be filed in a sealed envelope or other appropriate sealed container on which shall be endorsed the
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1 title of this action, the word "CONFIDENTIAL," and a statement substantially in the following
2 form:

3 **FILED UNDER SEAL**

4 By order of the Court, entered on [date], this envelope is to remain
5 sealed, and the Court, the Court's personnel and any receiving
6 person shall not reveal the contents thereof to any person until
further order of this Court.

7 All Confidential Information filed with the Court shall be filed and kept under seal until further
8 order of the Court. Where possible, only confidential portions of filings with the Court shall be
9 filed under seal. In the event that the Court declines to allow documents to be filed under seal, a
10 party wishing to present to the Court any document that contains Confidential Information may,
11 by formal motion practice, seek to furnish such Confidential Information to the Court in private
12 and may request that the motion, request, or application to which they relate be entertained in
13 private and that all copies of documents containing Confidential Information be returned to the
14 furnishing party following resolution of such motion, request or application.

15 12. If Confidential Information in the possession, custody or control of any receiving
16 person is sought by subpoena or other form of discovery request or compulsory process, the
17 receiving person to whom the process or discovery request is directed, shall (i) on or before the
18 fifth business day after receipt thereof, give written notice by hand or facsimile of such process or
19 discovery request together with a copy thereof, to counsel for the producing person; (ii) cooperate
20 to the extent necessary to permit the producing person to seek to quash or modify such process or
21 discovery request; and (iii) not make production or disclosure of such Confidential Information
22 until the producing person consents in writing to production or the receiving person is required by
23 a Court or court order to produce such Confidential Information, so long as the order is not stayed
24 prior to the date set for production or disclosure.

25 13. Upon final termination of this action, including all appeals, all parties and experts,
26 consultants and qualified persons shall within 30 days (i) return to the producing person or
27 destroy all originals of material produced and designated as Confidential Information and all
28 identical copies, whether in whole or in part, of such documents, and (ii) destroy all copies

thereof, as well as, all notes, memoranda or other documents that summarize, discuss or quote materials produced and designated as Confidential Information, except that, with respect to word processing and data base tapes and disks, they shall destroy or erase such tapes or disks to the extent practicable. Outside counsel for each party shall be entitled to retain their attorney work product and attorney client privileged material, including copies of any documents that have been filed with the Court or admitted into evidence and that contain or refer to information designated as Confidential Information, provided that all such documents shall remain subject to this Agreement. Counsel or record for the parties shall certify in writing to each producing person that the foregoing has been complied with.

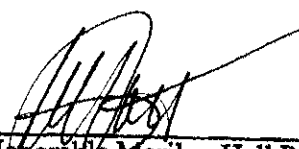
14. Except as specifically noted herein, this Agreement shall not limit a producing person's use of its own Confidential Information, nor shall this Agreement limit the ability of a party to disclose any document to its author or to anyone identified on the face of the document as a recipient.

15. The parties agree forthwith to submit this Confidential Agreement and Protective Order to the Court for approval and entry.

16. This Agreement shall survive and remain in full force and effect after termination of this action.

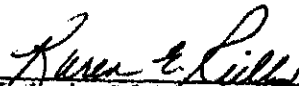
SO ORDERED:

Dated: 12/9/05


Honorable Marilyn Hall Patel
United States District Judge
Northern District of California

Dated: October 31, 2005

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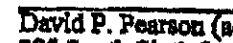
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Confidentiality Agreement and Protective Order
Case No. C 03-2522 MHP

549301 v1/BN

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17 November 2, 2005

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PALO ALTO

Confidentiality Agreement and Protective Order
Case No. C 03-2522 MHP

549301 vL/RIN

Exhibit A

CERTIFICATION

I, _____, certify my understanding that Confidential Information is being provided to me pursuant to the terms and restrictions of the Protective Order dated _____, 2005, in In re Cornerstone Propane Partners, L.P. Securities Litigation, Master File No. C 03-2522 MHP, and that I have been given a copy of and have read that Order and agree to be bound by it and submit to the jurisdiction of the United States District Court for the Northern District of California in connection with that Order. I understand that all such Confidential Information and copies thereof, including, but not limited to, any notes or other transcriptions made therefrom, shall be maintained in a secure manner and shall be returned promptly after the termination of this action to the counsel for the party or other person who provided such Confidential Information.

DATE: _____